



FLORIDA FARM BUREAU FEDERATION

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January 17, 2003

Country of Origin Labeling Program
Agricultural Marketing Service
USDA Stop 0249
Room 2092-S
1400 Independence Ave, S.W.
Washington, D.D. 20250-0249

Re: Notice of Request for Emergency Approval of a New Information Collection

Dear Sir or Madam:

Florida Farm Bureau Federation (FFBF) offers the following comments in response to the Agricultural Marketing Service's (AMS) November 21, 2002 Federal Register notice announcing that the agency is requesting emergency approval from the Office of Management and Budget for the new information collection, "Interim Voluntary Country of Origin Labeling of Beef, Lamb, Pork, Fish, Perishable Agricultural Commodities, and Peanuts under the Agricultural Marketing Act of 1946."

Background

In the Farm Security and Rural Investment Act of 2002, Congress amended the Agricultural Marketing Act of 1946 to require that certain food products sold at retail be labeled according to their country of origin by October 2004. To implement the requirement, Congress mandated that USDA develop guidelines that could voluntarily be used by retailers and their suppliers through September 30, 2004, by which time regulations for the mandatory program would be promulgated. The Voluntary Country of Origin Labeling Guidelines were published by the department in the October 11, 2002 Federal Register.

Subsequently, on November 21, 2002, AMS published the Notice of Request for Emergency Approval of a New Information Collection, which estimates costs for industry compliance with the record keeping requirements the agency contends are necessary in order to implement the voluntary country of origin labeling guidelines.

Since many of the issues and factors affecting the cost of compliance are rooted in both the new information collection and the voluntary guidelines, these comments may address provisions contained in both notices.

1. USDA's assertion that producers are required to implement a record-keeping system to comply with the labeling guidelines has no foundation in the statute.

The Country of Origin Labeling provisions of the Farm Security and Rural Investment Act of 2002 creates a burden on producers to provide

information to retailers, but not to maintain records. The statute states, in part:

"(d) AUDIT VERIFICATION SYSTEM. The Secretary may require that any person that prepares, stores, handles, or distributes a covered commodity for retail sale maintain a verifiable record-keeping system to verify compliance with this subtitle.

"(e) INFORMATION. Any person engaged in the business of supplying a covered commodity to a retailer shall provide information to the retailer indicating the country of origin of the covered commodity."

Congress clearly intended that producers and other suppliers provide information to retailers as to the origin of their product. It specifically did not, however, include "persons engaged in the business of supplying a covered commodity" in the subsection that prescribes record keeping.

2. The requirements of the statute and guidelines should apply only to those directly supplying a covered commodity to retailers.

In its Notice of Request for Emergency Approval of a New Information Collection, USDA estimated there are 2 million producers that would be affected by the country of origin labeling guidelines, and who therefore would be subject to the record-keeping requirements contained in the voluntary guidelines. FFBF believes USDA's estimate is overstated, particularly as it applies to perishable agricultural products. The 1997 Census of Agriculture as reported by USDA's National Agricultural Statistics Service (NASS) lists a total of 11,830 vegetable, sweet corn and melon producers and 25,207 fruit, nut and berry producers that represent approximately 95 percent of all sales of those commodities (annual sales of \$50,000 or more). The census data do not show what percentage of these farms produce "perishable agricultural products," as used in the statute; however, it can be reasonably argued that a portion of these farms produce fruits, vegetables, and nuts for processing, and, therefore would not be impacted by the labeling guidelines.

According to the Red Book, a credible, widely used fruit and vegetable industry directory and credit reporting service, there are a total of 5,680 firms in the seller/shipper category (producer level) that may supply covered commodities to retailers. While census data may show more domestic farms producing perishable agricultural products, most growers are not in the business of directly supplying perishable agricultural products to retailers. Shippers, growers' agents, brokers, processors, and/or marketing organizations handle the sales and marketing of their commodities. In addition to these firms, the Red Book lists 11,158 firms operating as brokers, wholesalers, distributors, importers and processors (food handlers) that may also supply retailers.

The statute clearly states that only persons engaged in the business of supplying a covered commodity to a retailer are required to provide information as to its country of origin. Therefore, using Red Book listings as the impacted universe, the "provide information" requirements of the statute would apply to fewer than 20,000 firms - less than one percent of USDA's estimate. Utilizing USDA data from the

PACA Branch, which licenses firms engaged in the selling and buying of perishable agricultural products, would result in an even smaller universe of affected firms. However, since PACA licenses are not required of growers who market only their own commodities, the Red Book listings were used as a more inclusive source of data.

3. Producers (growers, shippers, marketing organizations, etc.) already provide country of origin information on shipping containers and consumer-ready packages.

Each carton or package of perishable agricultural commodities grown, shipped and entered into commerce in the United States must list the country of origin of the product on the shipping container. This information is conveyed throughout the marketing chain up to, and including, retailers. The same requirement applies to imported products. It is a violation of the Perishable Agricultural Commodities Act (PACA) to mislabel the container, or otherwise make false statements about its contents or origin. Florida's country of origin labeling law has been enforced utilizing existing information on the shipping container since its passage in 1979. There is no need to create an additional burden on producers or food handlers in order to satisfy the requirements of the statute.

4. The record-keeping requirements of the guidelines are not only unnecessary, they are duplicative for producers and food handlers that are licensed by the PACA.

The PACA licenses the vast majority of firms supplying perishable agricultural commodities to retailers. Only growers that exclusively sell their own commodities are exempt from the licensing requirement. Each licensee is required by the PACA to maintain records for two years documenting all essential facts regarding each and every transaction in his business. In the case of transactions between a grower and his shipper, broker or agent, this may include information on the source of the commodity.

As stated earlier, we do not believe Congress intended that suppliers of perishable agricultural commodities be required to maintain records. The record-keeping mandate in the guidelines is nevertheless an unnecessarily duplication of existing requirements for PACA licensees.

5. The record-keeping requirements are also duplicative of other legal requirements.

There are both Food and Drug Administration (FDA) and U.S. Customs laws and regulations that already apply to food in packaged form.

The Tariff Act of 1930 requires that, unless excepted, every article of foreign origin or its container imported into the United States shall be marked in a conspicuous place to indicate to the ultimate purchaser the country of origin of the product. Fruits and vegetables in their original form are exempt from bearing the marking, but their containers must be so marked. Thus, for imported produce, the container is already labeled and the only new cost would involve removing the produce from the box and putting it in a labeled bin in the produce area of the store.

6. The cost of complying with the guidelines should be minimal for producers and food handlers.

USDA estimates that the first year cost to producers and food handlers of complying with the record keeping requirements of the guidelines would be \$1.34 billion. While we cannot comment on the prospective costs for products other than perishable agricultural commodities, we believe USDA's estimate to be significantly overstated.

As stated earlier, we do not share USDA's view that suppliers of perishable agricultural commodities (producers and food handlers) are bound by the record-keeping provisions of the statute. The only requirement is that information be provided to the retailer. And, since information on the origin of the product is currently shown on all shipping containers and consumer-ready packages, there should be no additional cost.

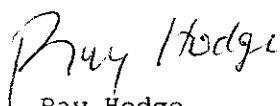
Summary

Firms engaged in the business of producing or handling perishable agricultural commodities potentially impacted by the guidelines amount to less than one percent of USDA's estimate. Most firms supplying covered products to retailers are licensed under the provisions of the PACA, which already requires detailed record-keeping. Therefore, the cost of compliance with the requirements of the voluntary guidelines will be minimal for producers and handlers of perishable agricultural commodities.

Based on the above information, FFBF strongly recommends that the department review the impact of the guidelines specifically on producers and handlers of perishable agricultural commodities and revise their estimates accordingly.

We appreciate the opportunity to comment, and look forward to working with the department in the practical implementation of the country of origin labeling program, both in its voluntary and mandatory phases.

Sincerely,



Ray Hodge
National Affairs Coordinator
Florida Farm Bureau